IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL, CIVIL JURISDICTION

WRIT **PETITION NO.1989 OF 2006**

M/s.M.K. Palia & Sons Pvt. Ltd...Petitioner

Vs.

The Mumbai Municipal Corporation

& Anr. .....Respondents

Mr.S.A. Sawant with Mr. Vinay Bhate, for the

Petitioner

Mrs. A.K. Savla, for Respondents.

CORAM: **F.I. REBELLO &**

ANOOP V. MOHTA, JJ.

DATE: 25th SEPTEMBER 2006

P.C.

. The petitioner by this petition seeks to challenge the rateable value as fixed by respondent No.1 in the year 1982 by filing a complaint in November, 2005. In the matter of fixation of rateable value the same is governed by the provisions of the Mumbai Municipal Corporation Act, 1888. Under Section 162 the Commissioner shall, at the time and in the manner prescribed in Section 160, give public notice of a day, not being less than fifteen days from the publication of such notice, on or before

which complaints against the amount of any rateable value entered in the ward assessment book will be received in his office. We are not concerned with the special notice in some cases. On such public notice being given every complainant against the amount of rateable value has to file, if aggrieved, a complaint which must be received in the office of the Corporation on or before the last date or the latest day fixed in this behalf for the public and special notice as aforesaid. That would be disposed of in terms of Sections 164, 165 and 166. Any person aggrieved by the disposal of the complaint and fixation of assessment is entitled to challenge the same by preferring an Appeal under Section 217 of the Act. That period have already been over. The petitioners did not file any complaint except the complaint filed in November, 2005 and in fact has paid the rateable value as fixed.

2. The contention of the petitioner is that the premises were taken over on lease from the Bombay Port Trust. The fixation of rent between the petitioner and the Bombay Port Trust was in issue before the Apex Court and has been decided by the Judgment of the Apex Court in the case of Jamshed Hormusji Wadia vs. Board of Trustees of the Port of Mumbai, (2004) 3 SCC 214. It is stated that considering that judgment the petitioners are entitled to seek review of the rateable value as fixed by the Corporation herein. We are unimpressed.

It was always open to the petitioners if aggrieved by the rateable value to file a complaint. Merely because the Apex Court in the year 2004 has disposed of the proceedings of fixation of rent between the Port Trust and its lessees is no ground for reopening the assessment which has been made and became final. This is not a case of unjust enrichment made under the mistake of law. These are two different aspects, one fixation of rateable value by the Corporation and the other fixation of rent between the landlord and tenant i.e. Bombay Port Trust and the petitioner herein. We are, therefore, clearly of the opinion that the petitioners have failed to follow the procedure as required under the law and the time limit having expired it is not open to them to challenge the past fixation of rateable value. In respect of any challenge to fixation of rateable value which is within limitation and if be aggrieved it will be open for the petitioner to file an Appeal as provided under Section 217 of the Corporation Act and/or if the complaint regarding fixation of rateable value for the period which can be considered is within time to call on the Competent Officer to decide the same. With the above observation the petition stands disposed off. No order as to costs.

(F.I. REBELLO, J.)

(ANOOP V. MOHTA, J.)